United States Court of Appeals

for the Second Circuit

PETITION FOR REHEARING EN BANC

ORIGINAL 75-6079

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B
P/S

Docket No. 75-6079

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and
THE CITY OF NEW YORK,

Plaintiffs-Appellees-Appellants,

-against-

LOCAL 638. . . LOCAL 28 OF THE SHEET METAL
WORKER'S INTERNATIONAL ASSOCIATION, LOCAL 28
JOINT APPRENTICESHIP COMMITTEE,

Defendants-Appellants-Appellees.

On Appeal From The United States District Court
For The Southern District Of New York

(Additional title appears on next page)

PETITION FOR REHEARING AND SUGGESTION FOR
REHEARING EN BANC BY APPELLEE-APPELLANT
CITY OF NEW YORK

W. BERNARD RICHLAND,
Corporation Counsel of the
City of New York,
Attorney for Plaintiff-Appellee-
Appellant City of New York,
Municipal Building,
New York, N.Y. 10007
566-2197 or 566-4337

L. KEVIN SHERIDAN,
ELLEN KRAMER SAWYER,
of Counsel.

J

SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants.

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-6079

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and
THE CITY OF NEW YORK,

Plaintiffs-Appellees-Appellants,

-against-

LOCAL 638. . . LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Defendants-Appellants-Appellees,

SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.

Defendants.

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

On Appeal From the United States District Court
For The Southern District Of New York

PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC BY APPELLEE-APPELLANT CITY OF NEW YORK

Preliminary Statement

Appellee-Appellant the City of New York hereby petitions the Court for rehearing and reconsideration of its decision entered March 8, 1976, modifying and affirming as modified the order and judgment of the United States District Court for the Southern District of New York (WERKER,J.).* The modifications by the panel derive solely from its disagreement with the District Court as to the nature and scope of permissible remedies under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e. The District Court found that Local 28 of the Sheet Metal Workers' International Association (hereinafter Local 28) and the Joint Apprenticeship Committee (hereinafter the JAC) had engaged in a long-standing pattern and practice of discrimination in violation of Title VII and Chapter I, Title B of the Administrative Code of the City of New York. To remedy the past and on-going discrimination the District Court ordered broad affirmative relief, including, inter alia, the imposition of a remedial racial membership goal upon Local 28 and the apprenticeship program, the institution of a court-appointed administrator to oversee Local 28 and the JAC, the payment of back pay to certain victims of past discrimination, and the replacement of one of the present JAC union trustees with a new representative of minority descent.

*On March 26, 1976, this Court extended the City and the EEOC's time to file a petition for rehearing to April 12. Rehearing with a suggestion for rehearing en banc is sought pursuant to Rules 35 and 40 of the Federal Rules of Appellate Practice.

While the District Court directed that admission preferences to Local 28 and the apprenticeship program be granted as part of the effort to achieve the overall 29% goal, the specific terms and conditions of the preferences were left to be established along with that of other methods, according to their relative efficacy, and finally embodied in an integrated affirmative action program. Final implementation of the District Court's order, which required countless meetings and voluminous correspondence between the parties and the Administrator during more than a two-month period, is found in a 30-page Affirmative Action Program which was approved by the District Court on November 13, 1975. An appeal from the entire affirmative action program is now pending before this Court.*

On appeal to this Court the panel affirmed the District Court's findings of discrimination, as well as the imposition of a combined union and apprenticeship program membership goal of 29% non-white persons by 1981 to be achieved through interim goals as agreed upon by the parties and enforced by the court-appointed administrator. But the panel, in a divided opinion, modified the relief to:

(1) Forbid minority-white admission ratios to the apprenticeship program once valid job-related

*On January 7, 1975, Local 28 and the JAC filed a Notice of Appeal from the Affirmative Action Program and Order entered November 25, 1975. The docket number of that appeal is 76-6003.

tests have been adopted;

(2) Eliminate the requirement that a white JAC union trustee be replaced by a representative of minority descent; and

(3) Extend back pay to non-whites who can show by testimonial evidence that they applied to and were rejected by Local 28 and the JAC for unlawful reasons.

On this application appellee-appellant City of New York requests that, upon rehearing, the panel reinstate, at least on an interim basis, the admission preference for non-whites into the apprenticeship program to insure achievement of the ultimate relief intended by the District Court - the 29% non-white membership goal with yearly interim goals - which goal the panel upheld on appeal. Failing our obtaining that relief, we urge that the Court should defer passing on the issue of preferential admission to the apprenticeship program until the appeal from the entire affirmative action program is heard. In addition, should the panel on rehearing not reverse itself and allow an interim preferential admission plan, we suggest that this appeal, which raises, as conceded by the panel, "one of the most important and difficult questions currently facing the federal judiciary" (Slip. op. at 2483), should be considered by the entire court en banc.

Background as to Genesis of 3:2 Admission Preference and its Premature Judicial Consideration Here

The District Court's extensive opinion and subsequent order and judgment decreed that Local 28 and the JAC take a variety of remedial actions, including, inter alia, the achievement of a 29% non-white population goal in the combined union and apprenticeship membership by 1981 with an admission preference for non-whites.* The District court ordered that the 29% remedial racial goal be implemented through the granting of an admission preference for non-whites engrafted onto methods of recruitment, selection, testing, record-keeping, admission, referral and employment as embodied in an affirmative action program to be developed by the parties and the court-appointed administrator. Each method of entry to Local 28, as decreed by the District Court in establishing the directives of the program, was to be geared to the admission of non-whites, either totally or through an admission preference, in furtherance of the 29% non-white membership goal, which was itself designed "to restore non-whites to the positions that would have been available to them absent the pattern and practice of discrimination by Local 28 and the JAC..." (p.142, Joint Appendix; see generally pages 136-145 of the Joint Appendix).

*The opinion and order and judgment are set forth at pages 68-146 of the Joint Appendix in this appeal. The opinion is also officially reported at 401 F. Supp. 467.

Local 28 and the JAC union trustees limited their appeals from the order and judgment to contesting essentially only (1) the establishment of a specific remedial racial goal for combined union and apprentice program membership and (2) the direction that one of the present three white union trustees on the JAC be replaced by a non-white.* The opinion of the panel ranges beyond these issues to consider and approve the various entry methods for non-whites outlined by the District Court. However, the panel reached beyond the record before it on this appeal to consider and strike a provision embodied in the affirmative action program, to wit, the application of the temporary quota, 3 minority to 2 white applicants, to the entrants of the 1976 apprenticeship program.

To a great extent, this overreaching was caused both by the far-ranging colloquy between counsel and the panel at oral argument on December 4, 1975 touching on provisions of the Affirmative Action Program and Order not properly a part of this record, and by the application of Local 28 and the JAC,** improperly brought

*The City is not asking for reconsideration of the panel's decision to strike this provision of the District Court's order.

**This application was brought by order to show cause dated January 13, 1975, six days after Local 28 and the JAC filed a Notice of Appeal from the Affirmative Action Program and Order, docket number 76-6003.

within the context of the instant appeal, to stay the implementation of the 3:2 ratio for apprenticeship admission under the Affirmative Action Program and Order. In its papers opposing that application, the City protested that the application was directed to provisions of the affirmative action program which was not technically part of the appeal then sub judice before the panel. The application was withdrawn upon stipulation among the parties, prompted by a suggestion of this panel, to suspend temporarily the use of the ratio to select apprentices, without prejudice to the rights of the parties under either the Order and Judgment, entered September 2, 1975, or the Affirmative Action Program and Order, entered November 25, 1975.

The Panel's Opinion.

All three members of the panel joined in approving the 29% overall membership goal established by the District Court and its directives for the giving of annual job-related apprenticeship and journeyman tests, to be preceded by extensive recruitment of minority candidates. The panel also unanimously eliminated the non-white JAC trustee and expanded the back pay class.

With respect to the striking of the admission preference for non-white apprenticeship candidates, Judge Feinberg issued a separate concurrence in which he wrote that the issue is one "bound to recur" and on which this

Court "seems badly divided." Slip op. at 2504. Judge Smith dissented and would have approved the temporary admission preferences for apprenticeship applicants as an appropriate entry level goal to remedy past discrimination. Slip Op. at 2500.

Grounds for Rehearing

(1)

There is no dispute that Local 28, maintaining jurisdiction over all five City boroughs, exercises complete control over entry into the sheet metal trade in New York City. Slip op. at 2483. Thus, the membership of the local constitutes the pool of qualified persons able to compete for available jobs in the Metropolitan area. Minorities have been effectively excluded from that pool for the past six decades. While considering these facts sufficient to justify an overall five year 29% goal, the majority has reduced the "goal" to no more than a fond hope by destroying the admission preferences designed to increase non-white membership.

As recognized by the panel, of the four means of union access (four-year apprenticeship program, transfer from "sister" unions, passing of a journeyman's test, organization of a former non-union shop), the JAC apprentice-

ship program has always been the predominant source of Local 28 journeymen.* Slip op. at 2486. This four-year program combines on-the-job training with classroom instruction and provides employer-paid wages ranging from 40% to 80% of journeymen rates.** The apprenticeship program has existed for over 40 years. It presently consists of eight terms of six months each. The program is designed to indenture a beginning class of apprentices every six months. See pages 75-79, 115 of the Joint Appendix.*** The District Court's findings, uncontested by Local 28 and sustained by the panel, were that the testing procedures used to select apprentices had an unjustified adverse impact on non-white applicants. See pages 79-90 of the Joint Appendix.****

It is self-evident that in today's severely constricted construction job market, the apprenticeship program, based on a work-sharing system built into the affirmative action program and offering immediate wages during training, assumes even more than its normal paramount importance in providing Local 28 journeyman. The program is, perforce, in this economy the only means of ensuring a continuous entrance of non-whites into the Local 28 membership rolls. Since other methods of direct union access offer no immediate

*Approximately 90% of the local's present journeymen membership comes for the program (page 968a of Joint Appendix).

**As of July 1974, Local 28 journeymen earned more than $12.00 per hour (page 1049 of the Joint Appendix).

***The reference to this part of the District Court's opinion is officially reported at 401 F. Supp. 467, 474-475.

**** 401 F. Supp. at 476-482.

jobs, the panel's reliance on such other methods, even if accompanied by vigorous recruitment drives, to meet the 29% goal, is somewhat quixotic.*

*The following facts are documented in the record on appeal from the Affirmative Action Program and Order. They were not fully before the panel when it struck the admission preference.

Prior to admission of any apprentice applicants in February 1976, the combined Local 28 and apprentice program membership was less than 5% non-white. The first interim goal is set by the Affirmative Action Program and Order, pursuant to the Order and Judgment, at 10% by July 1, 1976.

The fashioning of the 3 minority: 2 white ratio was based on calculations to determine the number of non-whites who would have to be admitted via the apprenticeship program route to meet the interim goal of 10%. The 1976 apprenticeship class, as ordered by the Affirmative Action Program, was to accommodate 300 new apprentices, 100 to be admitted by February 1976. The figure of 100 has already been revised downward by a stipulation among the parties, prompted by the panel's suggestion, at the January stay application brought by Local 28, to admit only those non-whites and whites who would have been admitted without benefit of the ratio. This resulted in the imposition of an arbitrary cutoff score, on an already non-validated test, determined only by the parties' agreement to allow the admission of an equal number of non-whites and whites, ultimately 33 of each group. Despite this stipulation, correspondance from the JAC shows the agreed number of 66 has presently been reduced, without explanation, to 53 apprentices.

Other methods of entry in the eight months following the District Court's judgment have not succeeded in expanding union membership by the admission of even one non-white. The October 11, 1975 journeyman's test, unvalidated to this date, which was expected to yield more than 200 non-whites, produced no more than 36 successful test takers, of whom only 17 are non-whites. Due to the absence of present journeymen jobs, all 36 men deferred, as permitted by the affirmative action program, their union membership. The establishment of the program for direct union entry of non-whites with four years experience in the trade, as broadly defined under the program, was delayed at the union's request. Through various maneuvers by the union, the program has not yet actually begun to consider applications. Due to the program's unlikely appeal in this job market, the vigorous recruitment drive to publicize the program in the non-white community has, at the union's request, been postponed indefinitely. The remaining methods, e.g., transfer, organization of non-union shops, appear to be equally unfruitful at this point in time.

Implementation of the carefully fashioned admission preference to the apprenticeship program is an integral part of the efforts of the affirmative action program designed essentially to attain a 29% non-white population in Local 28 by 1981. Further, it is crucial to promote now a program of which non-whites can presently afford to take advantage and which will ensure them full journeyman membership in the local in four years time when, hopefully, the present economic downturn will have been reversed. To limit access of previously excluded minorities to the only program that can presently assure such minorities their rightful place in the eligibility pool of qualified sheet metal labor at the moment when journeyman jobs again become available is to allow the presently failing economy to prevent this blatantly discriminatory union from being finally compelled to start to prepare non-whites for eventual job opportunities, thereby perpetuating the past exclusion sought now to be cured.

Whether or not preferential quotas should be utilized after there is a validated test, certainly until there is such a test, on the facts of this case, the quota ordered by the District Court should be allowed.

(2)

The striking of the admission preference, as explained by Judge Smith, who, although writing for the panel, would have upheld the preference, is attributed

variously to either one or both of two lines of reasoning adhered to by Judges Feinberg and Ward. At one point, Judge Smith indicates that the preference was stricken because the two other judges felt that it was "unacceptable" under the non-identifiability test as to the effects of "reverse discrimination" enunciated by this Court in Kirkland v. New York State Department of Correctional Services, 520 F. 2d 420, 427 (1975). Slip op. at 2493. Later, Judge Smith states that Judges Feinberg and Ward struck the preference on the much more narrow ground that, under Griggs v. Duke Power Co., 401 U.S. 424 (1971) and 42 U.S.C. §2000e-2(h), an admission preference cannot be engrafted onto the results of a validated test. Slip op. at 2499 and 2500.

As to the second point, the City submits that the record simply does not support the striking here of the admission preference as an unlawful alteration of the results of a validated test. The majority is apparently unaware, because of the inadequate record, that the present apprenticeship examination was unvalidated and, that, due to complexities, there is little likelihood that such examinations will be validated in the imminent future.* The record on appeal from the affirmative action program reveals, through

*The panel concedes that it is reaching out prematurely in addressing the specific apprenticeship ratio on this appeal, but says the ruling is made "to clarify". Slip op. at 2499, fn. 5.

voluminous correspondence between the parties and the administrator, the failure to make any meaningful progress in validating the test and that, significantly, the journeyman's test of last October 11, 1975 remains unvalidated to this date.* Further, the unexplained difference in the median scores on the apprenticeship exam between the white and minority groups raises the strong suspicion that that exam had itself an adverse impact on minority groups.**

The panel strikes here as reverse discrimination the very remedy approved by the panel in Rios v. Enterprise Association Steamfitters Local 683, 501 F. 2d 622 (1974), to wit, a 1:1 ratio for indenturing apprentices before adoption of the Rios affirmative action program and then, under the program, the direction that a minimum of 100 non-white apprentices should be indentured each year until 1977, with a grant of authority to the Rios Administrator to require that at least 30% or more non-whites be indentured into each apprenticeship class to achieve the minimum 30% non-white membership goal.

*In Rios v. Enterprise Association Steamfitters Local 638, 501 F. 2d 622 (1974), over which this Court continues to exercise jurisdiction, the approved admission preferences to the apprenticeship program are also engrafted onto the results of examinations. Counsel for some of the Rios plaintiffs has stated that this stipulation has continued to prevail since 1974 as they also have been as yet unsuccessful in validating their exams.

**The District Court allowed the unvalidated exam to be given in the thought that selection would be governed by the 3:2 protective device. Since the exam taking population of 561 persons included 351 (62.6%) non-whites, itself an approximate 3:2 mix, the 3:2 ratio selection measure is particularly appropriate to negate adverse impact.

by 1977.* Further, the Rios panel approved the development of trainee and entrance programs for only non-whites. 501 F. 2d at 626-627. Similarly, entry level ratios or preferences to cure past discrimination have been upheld by this Court. See, e.g., United States v. Wood, Wire & Metal Lathers International Union, Local 46, 471 F. 2d 408 (1973), cert den. 412 U.S. 939 (1973) (issuance of first 100 work permits to non-whites and then issuance of 250 permits annually on a 1:1 black white basis). These quotas were approved by this Court even though they were intended to and did in fact benefit members of the minority group who had not themselves personally been discriminated against. See also, Patterson v. Newspaper and Mail Delivers' Union, 514 F. 2d 767 (2d Cir., 1975), appeal pending sub nom. Larkin v. Patterson, 44 U.S.L.W. 3069, No. 155, July 18, 1975.

Second, the preference was not meant simply to cure any defect in the examination. It was designed to ensure achievement of the 29% goal, to achieve that goal

*The overall 30% goal was later reduced slightly because of a reassessment of the available work force. 71 Civ. 2877 and 71 Civ. 847, S.D.N.Y., May 5, 1975. The formula employed by Judge Bonsal to reassess is substantially that applied by the District Court here. Neither Local 28 nor the JAC takes issues with the fixing of the goal at 29%.

as early as possible* and to establish with the minority community, early in the administration of the affirmative action program, that the efforts of Local 28 and the JAC to recruit non-whites are genuinely related to the present economic realities. Remedy here must be measured by the breadth of the identified discrimination. Unlike Kirkland, its predecessors and its progeny, what is at issue here is not the imperfections of one civil service test, or series of such tests, but a variety of patterns and practices, each one discriminatory, by this union. What was stricken in Kirkland was the application of quotas to public service appointments which the New York State Constitution decrees be based as far as practicable on merit. Kirkland, 520 F. 2d at 428. To employ an admission preference here, at least on an interim basis, even should the apprenticeship examination be validated at some future point, does not force the confrontation, sought to be reserved by the Kirkland panel for the legislature, between affirmative action and the constitutionally mandated civil service laws. Kirkland, 520 F. 2d at 428-429.

Assuming, arguendo, the adequacy of the record

*As stated by the District Court, its intention was to utilize every diligent effort to achieve the program's goals as early as possible. The interim goals are not to be viewed as a ceiling. See District Court's Memorandum of October 23, 1975, included in record on appeal from Affirmative Action Program and Order.

to support the striking of the preference as an unlawful interference with validated test results, the inquiry, as viewed by Judges Feinberg and Ward, should end. However, according to Judge Smith, the majority depended, in part, on a further reason, namely, the Kirkland formula.*

To the extent the Kirkland formula is the appropriate test here, the City submits it is met. The panel concedes the existence on this record of the first requirement in unanimously sustaining the 29% goal. Slip op. at 2498. As to the second requirement, Judge Smith correctly points out, citing prior decisions of this Court (Slip. op. at 2500):

> "This apprenticeship program presents an entry-level situation parallel to that of Bridgeport Guardians. It is true that the relatively small number of openings makes those subject to reverse discrimination fairly easily identifiable. This was, however, true in Bridgeport Guardians and is necessary to correct the illegally established racial makeup of the present membership. United States v. Wood, Wire & Metal Lathers, 471 F. 2d 408, 413 (2d Cir., 1973); Rios v. Enterprise Association Steamfitters Local 638 of U.A., 501 F. 2d 622, 629 (2d Cir. 1974). Cf. Kirkland v. New York State Department of Correctional Services, 520 F. 2d 420 (2d Cir. 1975). The plan adopted here does not entail the discharge or demotion of majority members already in place, as did the plan disapproved in Chance v.

*That formula, as expressed by Judge Smith (Slip op. at 2493) is: "The imposition of racial goals is to be tolerated only when past discrimination has been clear-cut and the effects of 'reverse discrimination' will be diffused among an unidentifiable group of unknown, potential applicants rather than upon an ascertainable group of easily identifiable persons."

Board of Education, ____ F. 2d _____ (2d Cir., Jan. 16, 1976). It does reduce the appointment opportunities of new majority applicants temporarily until the past illegal discrimination has been remedied."

This case is indistinguishable from Rios, which the entire panel agrees to have been a proper result, within the Kirkland analysis, on the grounds of its record of "purposive 'past discrimination'" and the expandable nature of a union membership. Slip op. at 2493.

Further, within the strictures of Kirkland, even when there is no more than a "paucity of proof concerning past discrimination", 520 F. 2d at 428, the quota is permissible as an interim measure until the development of court - approved validated tests.

To the extent the application of the admission preference to the programs of this union was striken as unlawful reverse discrimination affecting a small group of identifiable white persons, the panel's ruling must be reconsidered in light of the United States Supreme Court's recent construction of Title VII and the broad scope of its remedies in Franks v. Bowman Transportation Co. Inc., 44 U.S.L.W. 4356, March 24, 1976. In dealing with entry to unions guilty of long-standing discrimination, it is apparent that the Supreme Court would undoubtedly find "untenable" the notion that relief granted by a district court should be denied "on the sole ground that such relief diminishes the expectations of other, arguably

innocent, employees..." 44 U.S.L.W. at 4364, citing with approval this Court's similar statement in United States v. Bethlehem Steel Corp., 446 F. 2d 652, 663 (1971). A fortiori, a "bumping" argument should not be allowed to defeat here a remedy applicable to applicants for entry into an expandable union membership.

Further, it would seem that the Court has rejected the analysis put forth by Judge Feinberg in his concurrence for disallowing all temporary quotas under the language of Title VII itself.* The Court, in its discussion of another part in the definitional provision of Title VII delineating only what is an unfair employment practice, definitively rejects an analysis based on the premise that since the existence of a bona fide seniority system and, by implication, the mere presence of a racial imbalance in a workforce, do not in themselves constitute unlawful practices under Title VII, they may not be altered through preferential treatment as part of the remedy for other identified discriminatory practices. 44 U.S.L.W. at 4359-4360.

*It would appear that Judge Feinberg's analysis is not that held by the majority of the judges of this Circuit. Cf. the Kirkland test itself.

CONCLUSION

FOR THE REASONS STATED ABOVE, THE PANEL SHOULD REVERSE ITS DECISION TO STRIKE THE ADMISSION PREFERENCE TO THE APPRENTICESHIP PROGRAM AND ALLOW REINSTATEMENT OF THE PREFERENCE AT LEAST ON AN INTERIM BASIS. FAILING SUCH REINSTATEMENT, THE PANEL SHOULD DEFER PASSING ON THE ISSUE UNTIL THE APPEAL FROM THE ENTIRE AFFIRMATIVE ACTION PROGRAM IS HEARD. IN ADDITION, SHOULD THE PANEL ON REHEARING NOT REVERSE ITSELF AND UPHOLD THE PREFERENTIAL ADMISSION, IT IS SUGGESTED THAT THE APPEAL SHOULD BE CONSIDERED BY THE ENTIRE COURT EN BANC.

April 9, 1976.

Respectfully submitted,

W. BERNARD RICHLAND,
Corporation Counsel of the
City of New York,
Attorney for the Plaintiff-
Appellee-Appellant City of
New York.

L. KEVIN SHERIDAN,
ELLEN KRAMER SAWYER,
of Counsel.

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

JAMES BURNS being duly sworn, says that on the 12 day of April 1976, he served the annexed Petn. for Re-Hearing upon Rothberg Rosenthal & Goldhaber Esq., the attorney for the Def't-Appellant-Appellee-IAC herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 44-Court St. in the Borough of Brooklyn, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this
12 day of April 1976

MIRIAM MULBERG
Commissioner of Deeds
City of New York - No. 3-1669
Commission Expires July 1, 1977

Miriam Mulberg

James Burns

Form 323-50M-701067(75) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

JAMES BURNS being duly sworn, says that on the 12 day of April 1976, he served the annexed Petn. for Re-Hearing upon David Raff Esq., the attorney for the Employment Law-Civil herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. 45-51-Chambers St. in the Borough of Manh., City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this
12 day of April 1976

MIRIAM MULBERG
Commissioner of Deeds
City of New York - No. 3-1669
Commission Expires July 1, 1977

Miriam Mulberg

James Burns

Form 323-50M-701067(75) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

JAMES BURNS being duly sworn, says that on the 12 day of April 1976, he served the annexed Petn. for Re Hearing upon Dominick Tumino Esq., the attorney for the State Atty General herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. #2 - W. T. C. in the Borough of Manh, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this
12 day of April 1976

MIRIAM MULBERG
Commissioner of Deeds
City of New York - No. 3-1669
Commission Expires July 1, 1977

Miriam Mulberg

James Burns

Form 323-50M-701067(75) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

JAMES BURNS being duly sworn, says that on the 12 day of April 1976, he served the annexed Petn. for Re-Hearing upon Raggiet C. Adams Esq., the attorney for the U. S. Attorneys herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. #1 - St Andrews Plaza in the Borough of Manh, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this
12 day of April 1976

MIRIAM MULBERG
Commissioner of Deeds
City of New York - No. 3-1669
Commission Expires July 1, 1977

Miriam Mulberg

James Burns

Form 323-50M-701067(75) 346

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

JAMES BURNS being duly sworn, says that on the 12 day of APRIL 1976, he served the annexed Pet. for REHEARING upon SOL BOGER Esq., the attorney for the Petts - Appellant - Local #28 herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at No. #1 - PEWS. PLAZA in the Borough of Manh, City of New York, being the address within the State theretofore designated by him for that purpose.

Sworn to before me, this
12 day of APRIL, 1976

MIRIAM MULBERG
Commissioner of Deeds
City of New York - No. 3-1669
Commission Expires July 1, 1977

Miriam Mulberg

James Burns

Form 323-50M-701067(75) 346